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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,872	04/25/2001	Antonio J. Grillo-Lopez	P 0280609/2000-30-154A	4921

909 7590 05/07/2003

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EXAMINER	
NICKOL, GARY B	
ART UNIT	**PAPER NUMBER**
1642	9

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/840,872	GRILLO-LOPEZ, ANTONIO J.	
	Examin r	Art Unit	
	Gary B. Nickol Ph.D.	1642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 February 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-50* is/are pending in the application.

4a) Of the above claim(s) *2,6 and 8-50* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-5 and 7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Response to Amendment

The Amendment filed February 24, 2003 (Paper No. 8) in response to the Office Action of October 23, 2002 is acknowledged and has been entered.

Claims 1-50 are pending.

Claims 2, and 6, and 8-50 have been withdrawn from further consideration by the examiner under 37 CFR 1.142(b) as being drawn to non-elected inventions.

Claims 1, 3-5, and 7 are currently under consideration.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Rejections Maintained:

Claims 1, 3-5, and 7 remain rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a method of treating a central nervous system (CNS) lymphoma in a mammal that has been diagnosed with said lymphoma, does not reasonably provide enablement for the claims as broadly drawn for the reasons of record in Paper No. 7, pages 3-5.

Applicants argue (Paper No. 8, page 2) that the teachings of the specification disclose methods that encompass both therapeutic and prophylactic measures. Applicants further argue that patients who have recovered from CNS lymphoma constitute a group in "need" of

prophylactic treatment. Applicants also argue that the safety profile of anti-CD20 antibodies has been described in numerous clinical trials.

These arguments have been considered but are not found persuasive. While there exists a group of patients who may be at *risk* for recurrence of CNS lymphoma, there is no basis to conclude that prophylactic administration of anti-CD20 antibodies would successfully prevent recurrence of a CNS lymphoma in said group for the reasons of record. Furthermore, all of the supporting abstracts supplied by Applicants only provide support for the safe administration of the anti-C20 antibodies in a group of patients who *currently* have a CNS lymphoma. Thus, applicant's arguments have not been found persuasive and the rejection is maintained.

Claims 1 and 7 remain rejected under 35 U.S.C. 102(b) as being anticipated by Maloney *et al.* (Blood, Vol. 90. No. 6, 1997, pages 2188-2195.) for the reasons of record in Paper No. 7, pages 5-6.

Applicants argue (Paper No. 8, page 3) that claims 1 and 7 are patentably distinguishable over Maloney *et al.* because the reference does not disclose any malignancies specifically associated with the CNS. Applicants argue that the claimed CNS is distinct from low-grade or follicular non-Hodgkin's lymphoma as described by Maloney *et al.* This argument has been considered but is not found persuasive because Applicants have not provided any supporting evidence to conclude that the treated non-Hodgkin's lymphoma as described by Maloney *et al.* is not inclusive of a CNS lymphoma. Moreover, as recited in the previous Action, the specification defines a central nervous system lymphoma as "any B cell lymphoma of the central nervous

system" which includes non-Hodgkin's lymphoma. Thus, for the reasons of record, applicant's arguments have not been found persuasive and the rejection is maintained.

Claims 1, 5, and 7 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney *et al.* (Blood, Vol. 90. No. 6, 1997, pages 2188-2195.) as further evidenced by Yoneda *et al.* (US Patent No. 5,626,845, 1997) for the reasons of record in Paper No. 7, pages 6-7.

Applicants reiterate their arguments that the claimed CNS lymphoma is distinct from the low grade or follicular non-Hodgkin's lymphoma as taught by Maloney *et al.* These arguments are not found persuasive for the reasons set forth above and for the reasons of record. Thus, applicant's arguments have not been found persuasive and the rejection is maintained.

Claims 1,3,5,7 remain rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,776,456 (Anderson *et al.*) as evidenced by Muphy *et al.* (Clinical Oncology, 2nd edition, 1995, American Cancer Society, Inc.) and Kuppers *et al.* (Ann Oncol, 1998, Vol. 9 Suppl 5, abstract) in further view of Yoneda *et al.* (US Patent No. 5,626,845, 1997) for the reasons of record in Paper No. 7, pages 10-12.

Applicants reiterate that CNS lymphomas are pathologically distinct from systemic lymphomas and generally require distinct therapeutic approaches. This argument has been considered but is not found persuasive because the previous Action established that the prior art patent of Anderson *et al.* (US Patent No. 5,776,456) did not specifically teach treating a CNS lymphoma (Paper No. 7, page 10, last paragraph). Further, the only distinct therapeutic approach required by the claims is the administration of a therapeutically effective amount of anti-CD20

antibody, which is anticipated by the prior art of Anderson *et al.* Applicants further argue that methods for the treatment of systemic lymphomas are not predictably extrapolated to treatment of a CNS lymphoma with a reasonable chance of success. This argument has been considered but is not found persuasive for the reasons of record. The fact that the B-cells are in a different location (i.e. the central nervous system) is not a reasonable basis to conclude that the claimed invention is non-obvious. The prior art successfully teaches eradicating the same population of cell types (B-cells) with the same drug (an anti-CD20 antibody) as that which is claimed. Thus, applicant's arguments have not been found persuasive and the rejection is maintained.

Claims 1,3, 5, 7 remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5,776,456 (Anderson *et al.*) as evidenced by Murphy *et al.* (Clinical Oncology, 2nd edition, 1995, American Cancer Society, Inc., pages 392,408) and Kuppers *et al.* (Ann Oncol, 1998, Vol. 9 Suppl 5, abstract) in further view of Yoneda *et al.* (US Patent No. 5,626,845, 1997) for the reasons of record in Paper No. 7, pages 8-9. Applicants' reiterate their arguments as set forth above in regards to the 103 rejection inclusive of Anderson *et al.* Thus, since applicant's arguments were not found persuasive, the rejection is maintained.

All other rejections and or objections are withdrawn in view of applicant's amendments and arguments there to.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary B. Nickol Ph.D. whose telephone number is 703-305-7143. The examiner can normally be reached on M-F, 8:30-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa can be reached on 703-308-3995. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Gary B. Nickol Ph.D.
Examiner
Art Unit 1642

GBN
April 28, 2003

ANTHONY C. CAPUTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600